

Chapter 3

The Right to Development and the 2030 Agenda for Sustainable Development

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Learning Objectives:

- To understand the general and specific linkages between the UN Declaration on the Right to Development, 1986, and the 2030 Agenda for Sustainable Development.
- To analyse the scope and content of the Right to Development as is relevant to the Sustainable Development Goals.
- To understand the symbiotic relationship between sustainable development and the right to development.
- To understand why and how operationalizing the Right to Development is vital for a successful implementation of the Sustainable Development Goals.

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Introduction

On 25 September 2015, at the United Nations Sustainable Development Summit held in New York, world leaders unanimously adopted a new and ambitious global plan of action for replacing the Millennium Development Goals (MDGs) which ran their course in 2015. This new global agenda, promisingly entitled “Transforming our world: the 2030 Agenda for Sustainable Development”, seeks to usher in an era in which sustainable development becomes a lived reality for everyone.¹ In order to realize its objectives, the agenda incorporates 17 Sustainable Development Goals (SDGs) which are accompanied by 169 targets to be achieved by 2030. These comprehensive Goals and Targets replace the 8 MDGs and their 18 Targets.

The ambition and scale of the new agenda around which almost all development work worldwide will likely gravitate until 2030 is unprecedented. However, it is equally clear that any global agenda of this nature cannot be implemented successfully unless the appropriate framework is adopted – a framework which is not only compatible with human rights standards and principles, but one which does not view implementation of the SDGs merely as charity or generosity bestowed upon human beings. This Chapter is intended to demonstrate that such an essential framework is encapsulated in the 1986 United Nations Declaration on the Right to Development (DRTD) which provides the normative foundation for development to be considered as a human right of all individuals and peoples the world over. Indeed, this Chapter will demonstrate that if we are to realistically usher in an era where peace, human rights, well-being, and ecological sustainability are advanced as envisioned by the 2030 Agenda, then operationalizing the RtD for the implementation of the SDGs is not only the most appropriate, but it is indeed indispensable.

This is also the lesson which must be learnt from the MDG story where despite admirable progress in some goals, some others unfortunately remained off-track. As the 2030 Agenda acknowledges with some regret, progress on MDGs by the end of 2015 was uneven, particularly in Africa, least developed countries, landlocked developing countries, and Small Island developing States.² There are sound reasons to contend that these shortcomings were a result of the absence of operationalizing the RtD in the implementation of the MDGs, despite the fact that one of the stated objectives of the Millennium Declaration from which the MDGs emanated was “making the right to development a reality for everyone”.³ Unfortunately, the first four years of implementation of the SDGs have not been entirely promising.⁴ The UN’s 2019 SDGs Report records that progress on its implementation since 2015 has been off-track with respect to most goals.⁵ More portentously, the data demonstrates that instead of making progress, indicators on many targets have worsened compared with previous years.⁶ This downward spiral is only

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¹ A/RES/70/1.

² *Idem*, paragraph 16.

³ A/RES/55/2, paragraph 11.

⁴ United Nations, *The Sustainable Development Goals Report 2019*, available at <https://unstats.un.org/sdgs/report/2019/The-Sustainable-Development-Goals-Report-2019.pdf>

⁵ *Ibidem*.

⁶ *Ibidem*.

expected to exacerbate in 2020 with the world brought to its knees by the COVID-19 pandemic.⁷ With implementation proceeding in a manner reminiscent of the MDGs era, it appears unlikely that the SDGs will be realized by 2030 with business as usual. It is in this backdrop that this Chapter will explain how the RtD can and ought to be operationalized if we are to ensure that by the end of 2030, progress on all SDGs is on-track, integrated, and even.

Brief Schematic Overview of the SDGs in the 2030 Agenda:

The edifice of the 2030 Agenda is constructed on an integrated foundation of 5 Ps: people, planet, prosperity, peace and partnership.⁸ Based on this foundation, the 2030 Agenda is sought to be erected through the implementation of 17 SDGs and 169 accompanying targets. The SDGs are much more comprehensive than the preceding MDGs in their coverage of issues.

The agenda stresses that “the interlinkages and integrated nature of the SDGs are of crucial importance in ensuring that the purpose of the new Agenda is realised.”⁹

Of particular significance in this schema are the “means of implementation” of the SDGs. Indeed, the 2030 Agenda explicitly acknowledges that without identification and operationalization of the means by which the SDGs can be implemented by States, none of the goals and targets would be achievable in reality.¹⁰ As such, in addition to the “means of implementation targets” under each of the SDGs, the 2030 Agenda also specifically incorporates SDG 17, self-eloquently entitled “Strengthen the means of implementation and revitalize the global partnership for sustainable development.”¹¹

Below is a comparative table of the MDGs and the SDGs.

Millennium Development Goals	Sustainable Development Goals
1. Eradicate Extreme Poverty and Hunger	1. End poverty in all its forms everywhere
2. Achieve Universal Primary Education	2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture
3. Promote Gender Equality and Empower Women	3. Ensure healthy lives and promote well-being for all at all ages
4. Reduce Child Mortality	4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
5. Improve Maternal Health	5. Achieve gender equality and empower all women and girls

⁷ See: United Nations, 2020, Progress Towards the Sustainable Development Goals, Report of the Secretary General to the ECOSOC, June-July 2020 session, available at https://sustainabledevelopment.un.org/content/documents/26158Final_SG_SDG_Progress_Report_14052020.pdf

⁸ A/RES/70/1, Preamble.

⁹ Ibidem.

¹⁰ Idem, paragraph 61.

¹¹ Idem, Goal 17.

6. Combat HIV/AIDS, Malaria and Other Diseases	6. Ensure availability and sustainable management of water and sanitation for all
7. Ensure Environmental Sustainability	7. Ensure access to affordable, reliable, sustainable and modern energy for all
8. Develop a Global Partnership for Development	8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
	9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation
	10. Reduce inequality within and among countries
	11. Make cities and human settlements inclusive, safe, resilient and sustainable
	12. Ensure sustainable consumption and production patterns
	13. Take urgent action to combat climate change and its impacts
	14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development
	15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss
	16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
	17. Strengthen the means of implementation and revitalize the global partnership for sustainable development

Right to Development in the Text of the 2030 Agenda

The textual and legal justification for why the RtD framework ought to be the way forward in implementing the SDGs is already inherent in the 2030 Agenda, which categorically states that it is “informed” by the DRTD.¹²

The term “informed” might seem to suggest a watering-down from the more vehement assertion in the UN Millennium Declaration of 2000, where the stated objective was “making the right to development a reality for everyone”. However, a closer look at the 2030 Agenda reveals that it also “reaffirms” the RtD and is indeed “grounded” in it. It reaffirms the RtD by reaffirming the outcomes of the major UN conferences and summits listed therein, all of which in turn reaffirm the RtD.¹³ The 2030 Agenda specifically singles out the 1992 Rio Declaration on Environment

¹² Idem, paragraph 10.

¹³ Idem, paragraph 11. The 2030 Agenda reaffirms “the outcomes of all major UN conferences and summits which have laid a solid foundation for sustainable development and have helped to shape the new

and Development by reaffirming all its principles.¹⁴ Pertinently, the Rio Declaration famously recognizes in its third principle that the RtD must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.¹⁵

But the 2030 Agenda goes even further. It recognizes that it is also “grounded” in the RtD. It does this by specifically acknowledging that the 2030 Agenda is “grounded” in the UN Millennium Declaration,¹⁶ which as pointed out earlier, contained a categorical commitment to making the RtD a reality for everyone.

These collective and consensual assertions by Member States that the 2030 Agenda reaffirms the RtD, is informed by the DRTD, and is grounded in it, should be seen as a mandate that implementation of the SDGs must be essentially founded on operationalization of the RtD.

The Scope and Content of the RtD Relevant to the SDGs

In order to situate the relationship between the RtD and the SDGs in the proper context, it may be helpful to briefly outline the evolution, scope and content of the RtD as is relevant to the 2030 Agenda. As has been noted in Chapter 1, the RtD first appeared as a concept in the context of the decolonization process in the 1960s and 70s. Newly independent countries soon realized that they had been born into a global political and economic system which they had neither created, nor was in their interest.¹⁷ The then existing global order, especially the financial and trading institutions, were created by the victors of WWII with the primary objective of reconstructing post-war Europe. Thus, in 1974, the UNGA, which by then comprised developing and least-developed countries in the majority, adopted the Declaration on the Establishment of a New International Economic Order.¹⁸ The Declaration stated that “the developing countries, which constitute 70 per cent of the world's population, account for only 30 per cent of the world's income”; that “it has proved impossible to achieve an even and balanced development of the international community under the existing international economic order”; and finally that “the gap between the developed and the developing countries continues to widen in a system which was established at a time when most of the developing countries did not even exist as independent States and which perpetuates inequality”.¹⁹ In 1977, developing and least-developed countries managed to pass a resolution at the UN Commission on Human Rights recognising the RtD for

Agenda”, including “the Rio Declaration on Environment and Development; the World Summit on Sustainable Development; the World Summit for Social Development; the Programme of Action of the International Conference on Population and Development, the Beijing Platform for Action; and the United Nations Conference on Sustainable Development (“Rio+ 20”), as well as the “follow-up to these conferences, including the outcomes of the Fourth United Nations Conference on the Least Developed Countries, the Third International Conference on Small Island Developing States; the Second United Nations Conference on Landlocked Developing Countries; and the Third UN World Conference on Disaster Risk Reduction”.

¹⁴ *Idem*, paragraph 12.

¹⁵ *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3–14 June 1992 (A/CONF.151/26 Vol. I)*, annex 1.

¹⁶ A/RES/70/1, paragraph 10.

¹⁷ Raghavan Chakravarthi, *Recolonization: GATT, the Uruguay Round and the Third World* (London, Zed Books, 1990). p. 52.

¹⁸ A/RES/S-6/3201.

¹⁹ *Idem.*, paragraph 1.

the first time as a human right and not merely as a charity bestowed upon them by the developed countries.²⁰ They also recommended to the ECOSOC that it should request the UN Secretary-General to undertake a study of the subject.²¹ This led to the creation in 1981 of a Working Group of Government Experts on the RtD. However, before the issue could get swallowed up by the political marsh, the African block created a *fait accompli* by incorporating the RtD as a binding obligation on States in the African Charter on Human and People's Rights.²² With one major continent of the world having recognised the RtD as an enforceable human right, and having recognised a legal obligation on States to ensure its realization, the rest of the world could no more ignore the topic. This led, in 1986, to the adoption of the DRTD with 146 countries voting in favour, 8 countries abstaining and the US voting in opposition.

Over time, however, as has been pointed out in Chapter 1, the RtD has become firmly embedded in international human rights law through several resolutions and declarations, especially since its unanimous inclusion in the Rio Declaration of 1992 as well as in the Vienna Declaration and Programme of Action, 1993.

Key features of DRTD relevant for the purposes of this Chapter can be summarized as follows:

- a. The RtD is an inalienable self-standing human right.²³ Development, and as will be pointed out below, sustainable development, are thus not mere privileges enjoyed by human beings, nor are they just subjects of charity or generosity.
- b. The RtD denotes the entitlement of the right-holders to three things viz. to participate in, contribute to, and enjoy economic, social, cultural and political development.²⁴
- c. The RtD also implies the full realization of the right of peoples to self-determination.²⁵
- d. Operationalizing the RtD involves respecting, protecting and fulfilling all other human rights — civil, political, economic, social, and cultural — along with generating the resources of growth such as GDP, technology etc.²⁶ This means that given the very nature of development as a human right, it cannot be realized when there are violations of other human rights.
- e. The RtD requires focusing not only on outcomes which are sought to be achieved as a result of a development plan (the “what” question), but also on the process by which those outcomes are achieved (the “how” question). Both the processes and outcomes of development must be consistent with and based on all other human rights.²⁷
- f. Human beings are individually (all human persons) and collectively (all peoples) the right-holders of the RtD against their States as well as other States.²⁸ Every State is entitled, as

²⁰ United Nations Commission on Human Rights Resolution 4 (XXXIII).

²¹ *Ibidem*.

²² Organization of African Unity, *African Charter on Human and Peoples' Rights*, CAB/LEG/67/3 rev. 5, Article 22.

²³ A/RES/41/128, Article 1(1).

²⁴ *Idem*.

²⁵ *Idem*, Article 1(2).

²⁶ *Third Report of the Independent Expert on the Right to Development, Mr. Arjun Sengupta*, E/CN.4/2001/WG.18/2, paragraph. 9–10.

²⁷ *Study on the Current State of Implementation of the Right to Development Submitted by Mr. Arjun Sengupta, Independent Expert*, E/CN.4/1999/WG.18/2, paragraph. 36.

²⁸ A/RES/41/128, Article 1(1)

an agent of all persons and peoples subject to its jurisdiction, to demand respect for their RtD by other States and international organizations.²⁹

- g. The DRTD entails duties on all States to respect, protect and fulfil the RtD across the following three levels:³⁰
 - (i) States acting individually as they formulate national development policies and programmes affecting persons within their jurisdiction;
 - (ii) States acting individually as they adopt and implement policies that affect persons not strictly within their jurisdiction; and
 - (iii) States acting collectively in global and regional partnerships.
- h. The RtD imposes an obligation on States, individually and collectively, to eliminate existing obstacles to its realization, refrain from making policies which are adverse to its realization, and to positively create conditions favourable to its realization.³¹
- i. Most importantly, the RtD imposes a duty on States with respect to international cooperation to achieve the RtD.³²

It is evident from the above summary that the duty of States to ensure the RtD is not limited to their own jurisdictions, but extends beyond borders and also permeates through international decision-making at international organisations. This is most explicit in Article 3(1), which stipulates that “States have the primary responsibility for the creation of national and international conditions favourable to the realisation of the right to development.”³³ States would, therefore, be failing in their obligations if their actions or the policies they support lead to creation of *international* conditions unfavourable to the realisation of the RtD. These include the whole gamut of policies supported by States at the UN, the International Monetary Fund (IMF), the World Bank (WB), the World Trade Organization (WTO), and other international as well as regional organizations. Article 4(1) further stipulates that “States have the duty to take steps, *individually and collectively*, to formulate international development policies with a view to facilitating the full realisation of the right to development.”³⁴ As Sengupta has stressed, “making the RtD a human right recognised by all Governments, enjoins them to follow a code of conduct that not only restrains them from disrupting the conditions required to fulfil that right but also actively assists and promotes its fulfilment.”³⁵

This duty of States is also evident from the provisions related to “international cooperation” enshrined in DRTD. Article 3(3) lays down that “States have the duty to co-operate with each

²⁹ *Idem*, Article 2. See also: Anne Orford, “Globalization and the Right to Development” in Philip Alston (ed.), *People’s Rights* (Oxford, Oxford University Press, 2001).

³⁰ United Nations, *Report of the High-Level Task Force on the Implementation of the Right to Development*, A/HRC/15/WG.2/TF/2/Add.2 and Corr.1, annex, para.1

³¹ A/RES/41/128, Articles 1(1), 2(3), 3(1) and (3), 4(1), 6(1) and (3) and 10.

³² For detailed analysis, see United Nations, “Commentaries to the Draft Convention on the Right to Development”, Prepared by Mihir Kanade, *Report of the Chair-Rapporteur, Zamir Akram, to the UN Working Group on the Right to Development*, A/HRC/WG.2/21/2/Add.1, 20 January 2020, commentaries on draft article 13.

³³ A/RES/41/128, Article 3(1).

³⁴ A/RES/41/128, Article 4(1). See also: Article 10. “Steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels”.

³⁵ E/CN.4/1999/WG.18/2, paragraph 59.

other in ensuring development and eliminating obstacles to development.”³⁶ Specifically, with reference to developing countries, DRTD states in Article 4(2) that “sustained action is required to promote more rapid development of developing countries” and that “as a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development.”³⁷

The Symbiotic Relationship between Sustainable Development and the RtD

Since the 2030 Agenda recognizes that the implementation of the SDGs should be informed by DRTD and that the Agenda itself is grounded in the RtD, it is pertinent to articulate the relationship of the RtD with the notion of sustainable development. “Sustainable development” as a global objective has gained massive policy significance in the last thirty years or so, ever since its famous articulation by the Brundtland Commission, in its 1987 report titled “Our Common Future”.³⁸ In this report, Sustainable Development was defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”³⁹ It encompasses three general policy areas: social development, economic development and environmental protection.⁴⁰ The social development dimension of the concept obviously includes human rights, inasmuch as, it is impossible to have social development and in turn sustainable development if it undermines human rights.⁴¹

Whether “sustainable development” is a legally binding norm under international law has been a subject of debate among scholars.⁴² In *Gabcikovo — Nagymaros Project*, the ICJ referred to sustainable development as a “concept” in its majority opinion.⁴³ In his separate opinion in support of the majority, Judge Weeramantry, however, opined that sustainable development was more than a mere concept, and that it was a “principle with normative value” and an “integral part of modern international law.”⁴⁴ In a later case, the ICJ did not go the same extent, however, it did elevate “sustainable development” from being merely a concept to being an “objective” under international law.⁴⁵

However, until the adoption of the 2030 Agenda, not everyone had come to an agreement on the definition of “sustainable development”, although as mentioned above, the definition by the

³⁶ A/RES/41/128, Article 3(3).

³⁷ *Idem.*, Article 6(1).

³⁸ World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987).

³⁹ *Idem.*, paragraph 43.

⁴⁰ A/RES/S-19/2.

⁴¹ A/RES/66/288, paragraphs 8, 9.

⁴² See Marie-Claire Cordonier Segger and Ashfaq Khalfan, *Sustainable Development Law: Principles, Practices, and Prospects* (Oxford, Oxford University Press, 2004); Nico Schrijver, *The Evolution of Sustainable Development in International Law: Inception, Meaning and Status* (Leiden, Martinus Nijhoff, 2008).

⁴³ *The Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgement, I.C.J. Reports 1997*, p. 7, paragraph 140.

⁴⁴ *The Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Separate Opinion of Vice-President Weeramantry, I.C.J. Reports 1997*, p. 88, at pp. 88–89.

⁴⁵ *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgement, I.C.J. Reports 2010*, p. 14, at pp. 75–77.

Brundtland Commission was and still is the most accepted one. In his landmark book entitled “Idea of Justice”, Amartya Sen argued that the definition by the Brundtland Commission does not adequately capture all the tenets of sustainable development.⁴⁶ For instance, he singled out Robert Solow’s critique of the Commission’s definition that it unnecessarily focuses on “needs” in a narrow manner. In turn, Solow suggested that Sustainable Development should mean “that the next generation must be left with whatever it takes to achieve a *standard of living* at least as good as our own and to look after their next generation similarly.”⁴⁷ While Solow enlarged the focus from “needs” to “standard of living”, Sen still argued that neither of these definitions addressed the fact that for many people around the world, development includes expansion of their freedoms, capabilities and the values they cherish, and not only their needs or standards of living. Therefore, Sen proposed that Sustainable Development should be defined as “development which encompasses the preservation, and when possible expansion, of the substantive freedoms and capabilities of people today without compromising the capability of future generations to have similar or more freedom”.⁴⁸ Despite the disagreement on the precise scope of sustainable development, it is vitally important to note that everyone agreed that the Brundtland Commission’s definition represented the lowest common denominator. The dispute was about how much it ought to be expanded from that threshold.

This open-endedness and lack of consensus on the scope and content of sustainable development is not necessarily problematic. Indeed, as has been argued, the concept is of an intrinsically evolutive nature, and that “rather than being a weakness, [this] represents the strength of the concept” because, “to be able to function, the contents of sustainable development must evolve, the specificities of each situation and each set of circumstances must be taken into account, and this inherent malleability is not an obstacle to sustainable development’s legal classification.”⁴⁹ Nothing exemplifies this better than the 2030 Agenda itself. Its adoption has for the first time given a robust shape, colour and texture to the concept of sustainable development. The 17 SDGs and their accompanying 169 targets as outlined in the 2030 Agenda can today be seen as representing a global consensus on what Sustainable Development entails.

It is in the aforesaid context that the RtD and sustainable development should be seen essentially as the same concepts in different incarnations. On the one hand, the very adoption of the 2030 Agenda by States could be seen as an implementation by them of their duty stipulated in the DRTD to “take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development”.⁵⁰ In this sense, the SDGs should be seen as a policy expression by States of their intention individually and collectively to fulfil their obligations under the DRTD and a plan of action for operationalizing the RtD.

⁴⁶ Amartya Sen, *The Idea of Justice*. (London, Penguin Press, 2009), pp. 248–52.

⁴⁷ Robert Solow, *An Almost Practical Step toward Sustainability* (Washington, DC, Resources for the Future Press, 1993).

⁴⁸ Amartya Sen, *The Idea of Justice*, footnote 69, pp. 251–52.

⁴⁹ Virginie Barrel, “Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm”, *The European Journal of International Law*, vol. 23, No. 2 (2012), p. 383.

⁵⁰ A/RES/41/128, Article 4(1).

On the other hand, operationalizing the RtD can in turn significantly bolster the realization of the 2030 Agenda by providing it with a normative framework effectively stipulating that the participation in, contribution to and enjoyment of sustainable development by all human persons and peoples ought not to be seen as a charity, privilege or generosity bestowed upon them by States, but as a human right with corresponding duties. The RtD gives proper shape, colour and texture to the SDGs by purposely stressing on the right and duty aspects of sustainable development. By insisting that development is a human right which has clearly identified duty-bearers, the RtD hammers down the point that the only way development can be sustainable is if it is itself treated as a right and not as a charity, and if it encompasses all human rights as equally important and ensures that no human right is undermined.

Indeed, in a study authorized by the UN Commission on Human Rights, Gutto noted that the RtD necessarily includes the notion of sustainable development, and should be more appropriately called “Right to Sustainable Development.”⁵¹ Unsurprisingly, several recent Declarations have directly linked sustainable development with the RtD.⁵² Most importantly, the 2030 Agenda completes the circle by categorically reaffirming the RtD in the context of implementing the SDGs and by emphasizing that it is informed as well as grounded in the DRTD.

Operationalizing the RtD for Implementation of the SDGs

Having demonstrated the symbiotic relationship of the RtD with the 2030 Agenda and the SDGs, it is now possible to specifically identify what operationalizing the RtD for the implementation of the SDGs would entail. Beyond the legal and textual justifications, there are sound policy reasons why operationalizing the RtD is also the most sensible means to go forward in implementing the SDGs, if they are to be successful.

a. Focusing on both the process and outcome aspects in the implementation of the SDGs

The RtD requires a focus not only on the outcomes which must result from the implementation of the 2030 Agenda, but equally on the processes by which those outcomes must be achieved. This includes participation of all stakeholders, as well as respecting the policy space of States and their people in determining and implementing their own development priorities. By defining development as a comprehensive *process* of constant improvement in well-being,⁵³ the DRTD focuses not only on the outcomes which must result from a development agenda, but equally on the process by which those outcomes must be achieved. The RtD, therefore, not only tells us *what* is to be achieved, but also *how* it is to be achieved. It is here that while the 17 SDGs focus on the outcomes that are to be achieved by 2030, it is only operationalization of the RtD which can guide us on how they can be achieved successfully.

The process of designing the 2030 Agenda has indeed already provided ample proof of the importance of getting the process aspect right in order to get the outcomes right. Although the MDGs were presented as having emanated directly from the Millennium Declaration of 2000, they were in reality not designed through a participatory process; rather they were the handiwork

⁵¹ *The Legal Nature of the Right to Development and Enhancement of its Binding Nature*, E/CN.4/Sub.2/2004/16, paragraph. 50.

⁵² Association of Southeast Asian Nations, *ASEAN Human Rights Declaration*, adopted on 18 November 2012 at Phnom Penh, Cambodia, Articles 35–37. Also see A/RES/66/288, paragraph 8.

⁵³ A/RES/41/128, preamble, paragraph 2.

of a group of experts in the UN Secretariat.⁵⁴ It is no secret that as a result of this closed process, the MDGs suffered from several structural shortcomings in the design of targets and indicators thereof and indeed some contradictions with the Millennium Declaration itself.⁵⁵ On the other hand, a collective and participatory process of engagement by several stakeholders, including the United Nations system, States, civil society, and academia,⁵⁶ resulted in a markedly improved outcome in terms of the design of the 2030 Agenda, the 17 SDGs and the accompanying 169 targets. This participatory approach to even identifying development priorities is indeed a fundamental principle of DRTD which makes a strong call for active, free, and meaningful participation.⁵⁷

A few examples will be useful in highlighting this advancement. Target 1A of MDG 1 required halving between 1990 and 2015, the proportion of people whose income is less than 1.25 Dollars a day. Similarly, Target 1C required halving between 1990 and 2015, the proportion of people who suffer from hunger. While on the one hand it is exclusionary to focus only on half of the extremely poor people and not all, it can also be inequitable if in the process of fulfilling these targets, the most vulnerable sections of the society – the bottom half – get ignored. The result is that while we have indeed managed to achieve the overall targets of halving the proportions of extreme poverty and hunger by 2015, we also know that those out of extreme poverty and hunger are not the bottom half i.e. the most marginalized sections of the global society such as those living in rural areas, ethnic minorities, indigenous or tribal populations. The DRTD mandates improvement in well-being of the entire population and of all individuals as well as in the fair distribution of the benefits resulting therefrom,⁵⁸ and therefore, it requires a focus on the most vulnerable the first. Following the participatory approach adopted in drafting the new goals, SDGs 1 and 2 pertaining to poverty and hunger, now not only expand the coverage to *all* people from the previous ‘halving the proportion’, but also explicitly prioritize the most vulnerable sections of the society.⁵⁹ This, in general, follows the explicit commitment made by States in the 2030 Agenda to ‘leave no one behind’⁶⁰ and to ‘reach the furthest behind first’⁶¹.

Another instance of the advancement in the 2030 Agenda is the inclusion of technology-related targets. Among the several targets enshrined under SDG 17, Targets 17.6 to 17.8 focus on the importance of technology, and as a natural corollary, on the importance of a global partnership for technology facilitation, as one of the essential means for implementation of the SDGs and the 2030 Agenda.⁶² Sixteen other targets in the SDGs additionally refer to the term “technology” or its close derivatives, however, the means of implementing those other targets and goals are

⁵⁴ Jan Vandermoortle, “The MDG Story: Intention Denied”, *Development and Change*, vol. 42, No. 1 (2011).

⁵⁵ United Nations Office of the High Commissioner for Human Rights, *Claiming the Millennium Development Goals: A Human Rights Approach* (Geneva, United Nations, 2008); United Nations Millennium Campaign and United Nations Development Programme, *Millennium Development Goals and Indigenous Peoples* (Bangkok, United Nations, 2010).

⁵⁶ A/RES/70/1, paragraph 6.

⁵⁷ A/RES/41/128, Article 2(3) and Article 8(2).

⁵⁸ A/RES/41/128, preamble, paragraph 2 and Article 2(3).

⁵⁹ A/RES/70/1, Goals 1.1, 1.3, 1.4 and 1.5

⁶⁰ *Idem*, preamble, and paragraphs 4, 26, 48, 72.

⁶¹ *Idem*, paragraphs 4 and 74(e)

⁶² *Idem.*, Targets 17.6 to 17.8

captured in Targets 17.6 to 17.8.⁶³ The significant presence of technology-related targets in the 2030 Agenda is an acknowledgement of the fact that “technology is essential for achieving the SDGs and reaping the benefits of synergies among them, as well as for minimizing trade-offs among goals”.⁶⁴ This might seem rather simplistic and mundane on first blush. One might even be tempted to assume that technology must have always been at the forefront of any previous global agenda for alleviating poverty, addressing climate change, and better responding to human rights and humanitarian crises. A juxtaposition of the SDGs with their predecessor MDGs, however, will reveal that inclusion of technology-related targets in the former was not a mere formulaic carry-over from the past. The MDGs were, in fact, conspicuously silent on technology, except for a feeble whisper in its Target 8.F, whereby States were encouraged “in cooperation with the private sector, [to] make available the benefits of new technologies, especially information and communications.”⁶⁵ This is still another example of how a participatory process for designing the SDGs helped achieve significant improvements over the design of the MDGs.

As such, while the DRTD’s normative principles have been instrumental in getting the goals right, they must also be operationalized for the successful implementation of the SDGs.

b. Implementation of the SDGs is not a matter of charity but of rights of human beings

The DRTD states in no uncertain terms that development is a human right, and that the human person is the central subject of development and should be the active participant and beneficiary of the RtD.⁶⁶ As such, the RtD requires that to be sustainable in the true sense of the term, development must not be seen as a charity, privilege or generosity, but rather, as a right of human beings – both as individuals and peoples - everywhere. The illustration of the technology-related SDGs and targets may again be invoked here. Targets 17.6 to 17.8 aim at ensuring technology facilitation, establishment and operationalization of a technology bank, and a science, technology and innovation capacity-building mechanism for LDCs. The RtD mandates that these mechanisms must be seen as a matter of human rights and not of charity. Unless these targets and the corresponding mechanisms are operationalized on the basis that access to technology for sustainable development is a human right, particularly of people living in developing countries, they are doomed for failure.

c. States are duty-bearers with respect to implementation of the SDGs, both internally and externally

As discussed above, the DRTD recognizes that States are duty-bearers with respect to the RtD. This duty is owed not only internally to their own citizens, but also externally both through actions of States which have impacts beyond borders, and through collective actions including in regional and international organizations. As pointed out earlier, the 2030 Agenda specifically lays emphasis on the “means of implementation” of the SDGs. It acknowledges that “the scale and ambition of the new Agenda requires a revitalized Global Partnership to ensure its

⁶³ The term technology has also been referred to in Targets 1.4, 2.a, 4.b, 5.b, 6.a, 7.a, 7.b, 8.2, 9.4, 9.5, 9.a, 9.b, 9.c, 12.a, 14.a, and 17.16.

⁶⁴ United Nations Department of Economic and Social Affairs, *Global Sustainable Development Report 2016* (New York, United Nations, 2016), p. xiv.

⁶⁵ “Official List of MDG Indicators”. Available from <http://mdgs.un.org/unsd/mdg/Host.aspx?Content=Indicators/OfficialList.htm> (Accessed 26 November 2016).

⁶⁶ A/RES/41/128, Article 2(1).

implementation” and while committing to it in a spirit of global solidarity, states that such partnership “will facilitate an intensive global engagement in support of implementation of all the Goals and targets, bringing together Governments, the private sector, civil society, the United Nations system and other actors and mobilizing all available resources”. This is sought to be achieved in two ways. Firstly, each SDG, except SDG 17, contains not only the targets to be achieved for realization of the SDG concerned (enumerated numerically), but also separate targets identifying the “means of implementation” for that specific SDG (enumerated alphabetically). The box below with reference to SDG 1 provides an illustration.

Goal 1. End poverty in all its forms everywhere

1.1 By 2030, eradicate extreme poverty for all people everywhere, currently measured as people living on less than \$1.25 a day

1.2 By 2030, reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions

1.3 Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable

1.4 By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance

1.5 By 2030, build the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters

1.a Ensure significant mobilization of resources from a variety of sources, including through enhanced development cooperation, in order to provide adequate and predictable means for developing countries, in particular least developed countries, to implement programmes and policies to end poverty in all its dimensions

1.b Create sound policy frameworks at the national, regional and international levels, based on pro-poor and gender-sensitive development strategies, to support accelerated investment in poverty eradication actions

Secondly, SDG 17, specifically lays emphasis on strengthening the means of implementation of the SDGs through a revitalized global partnership for sustainable development. In recognition of this two-fold approach, the 2030 Agenda states that “the means of implementation targets under Goal 17 and under each SDG are key to realising our Agenda and are of equal importance with the other Goals and targets”.

If global partnership and international cooperation are the means and the key for achieving all the SDGs, SDG 17 and the “means of implementation” targets under the preceding 16 SDGs are far too important to be relegated to the fungible and unpredictable nature of charity, generosity or privilege. Operationalizing the RtD essentially means contextualizing SDG 17 and the “means of implementation” targets in the proper perspective by viewing them as an expression of the duty of States towards international cooperation, which is enshrined not only in the DRTD but also in the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and several other international instruments.

d. No trade-off between human rights in the implementation of SDGs

Operationalizing the RtD means insisting on a comprehensive, multidimensional and holistic approach to development as a human right. On the one hand, this means that all SDGs must be achieved in a manner which is aligned with human rights and promotes their fulfilment. On the other hand, operationalizing the RtD requires us to ensure that no goal is achieved at the cost of any human right, substantive or procedural. When development itself is viewed as a human right, it can neither result from, nor result in, violations of other human rights. There can be no trade-off between rights.

e. Ensuring that programmes and projects aimed at implementation of the SDGs adopt a Human Rights Based Approach to Development (HRBA) which is firmly based on the RtD

Human Rights Based Approach to Development (HRBA) – sometimes also referred to as “rights-based development” – focuses on linking and aligning the objectives of development projects to specific human rights norms, standards and principles.⁶⁷ It is a “conceptual framework” aimed at ensuring the interdependence, indivisibility and interrelated nature of all human rights, whether civil, political, economic, social or cultural, in the actual implementation development projects.⁶⁸ It is the current approach promoted by the UN system and is widely adopted by development agencies around the world, albeit with slight deviations in interpretation. In theory, adopting HRBA should result in operationalizing the RtD. However, this is possible only if HRBA does not treat development and human rights as separate concepts, but is based on an understanding that development itself is a human right. Unfortunately, there is a tendency among many development agencies, especially of the Global North, whereby HRBA is limited conceptually by treating development and human rights as separate objectives which only need to be linked. In this limited conceptualization of HRBA, it is enough to ensure that in any development project, human rights must not be violated during implementation, but must be rather promoted. While this is obviously vital, operationalizing the RtD requires that a true HRBA must go further and consider development itself a self-standing human right. In other words, this requires adoption of the “normative framework” of the RtD. This is not merely a semantic armchair distinction but is profoundly important in practice.

In programmatic terms, HRBA as understood and designed by most donor countries and their development agencies, has always insisted on recipients of development aid ensuring respect for human rights while implementing development projects through transparent and accountable

⁶⁷ United Nations Office of the High Commissioner for Human Rights, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (Geneva, United Nations, 2006). See also, United Nations Development Group, *UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (the Common Understanding)* (New York, United Nations, 2003).

⁶⁸ The Vienna Declaration and Programme of Action stipulates in its paragraph 5 that “All human rights are universal, indivisible and interdependent and interrelated”. It further highlights that they are all equally important by stipulating that “The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis”. See, A/CONF.157/24 (Part I), chap. III, paragraph 5. For detailed analysis of this principle in international human rights law, see, United Nations, “Commentaries to the Draft Convention on the Right to Development”, Prepared by Mihir Kanade, *Report of the Chair-Rapporteur, Zamir Akram, to the UN Working Group on the Right to Development*, A/HRC/WG.2/21/2/Add.1, 20 January 2020, p.34.

institutions. While that is obviously necessary, it has not looked at international cooperation to ensure development and not impede it as a matter of duty of the donors. The RtD requires that HRBA must be understood not only as requiring recipients to respect human rights while implementing development projects, but also requires HRBA to be understood as donor States having duties with respect to development *as a matter of human rights*. Operationalizing the RtD in implementing the SDGs would, therefore, not only require the recipients of international cooperation under SDG 17 and other “means of implementation” targets to fulfil their human rights obligations internally through accountable and transparent institutions, but also require the donors in international cooperation to be duty bound by human rights principles while providing financial or technical aid for the implementation of the SDGs. This includes ensuring that developing countries have the necessary policy space to define their own development priorities in line with the SDGs and their own mechanisms for implementing them.⁶⁹ For instance, when developed countries “promote the development, transfer, dissemination and diffusion of environmentally sound technologies to developing countries on favourable terms, including on concessional and preferential terms, as mutually agreed” under Target 17.7, the normative framework of principles of the DRTD require that they respect the policy space which developing countries need in order to define their own development and technology-related priorities in line with the SDGs and their own mechanisms for implementing them. They also require ensuring that donors do not impose conditionalities on financial and technical aid which violate the national policy space and ability of States to fulfil their human rights obligations. These principles are inherent to the Addis Ababa Action Agenda (AAAA) on Financing for Development,⁷⁰ which has been reaffirmed by the 2030 Agenda and is an integral part of it.⁷¹ The AAAA also contains a commitment to the RtD,⁷² and therefore, if the SDGs are to be successful, they need to be implemented in accordance with the normative principles of the DRTD.

- f. Indicators for measuring the implementation of the SDGs and targets must be compatible with the objective of making the RtD a reality for everyone

Finally, the application of the DRTD to the SDGs means ensuring that the indicators for all the targets are compatible with the objective of making the RtD a reality for everyone, as promised in the Millennium Declaration. This includes ensuring that there are clear, quantifiable indicators for both national and international action, with appropriate benchmarks. This is especially important considering that Member States only agreed to the SDGs and the corresponding targets in the 2030 Agenda, while outsourcing the development of indicators to measure progress to the UN’s Statistical Commission. This process for the development of indicators by itself runs contrary to the participatory approach adopted for the design of goals and targets. Unsurprisingly, the operational indicators as developed by the Statistical Commission have in the recent past come under criticism from several countries. For instance, the G77 has objected that several aspects of SDG 17 have not been adequately integrated in the indicators; that the indicators as they currently

⁶⁹ The need for respecting national policy space is already incorporated in the 2030 Agenda. See A/RES/70/1, paragraphs 21, 44, 63, 74(a), 81 and Goal 17.5.

⁷⁰ *Outcome document of the Third International Conference on Financing for Development, Addis Ababa, Ethiopia, 13–16 July 2015*, Endorsed by UNGA Resolution 69/313 of 27 July 2015.

⁷¹ A/RES/70/1, paragraphs 40, 47, 62, 70 and 86.

⁷² *Outcome document of the Third International Conference on Financing for Development, Addis Ababa, Ethiopia, 13–16 July 2015*, Endorsed by UNGA Resolution 69/313 of 27 July 2015, paragraph 1.

stand are not faithful to the SDGs; and that they reinterpret the targets.⁷³ In particular, the G77 and China have emphasized that many targets emphasize the obligations of developing countries and undermine those of developed countries.⁷⁴ To cite a specific example, with respect to the technology-related targets, the LDCs Group objected that despite the LDC technology bank being mentioned in Target 17.8, it is not addressed at all in the sole corresponding Indicator 17.8.1, which speaks only of measuring the proportion of individuals using the Internet.⁷⁵ The RtD would require that the indicators also measure specifically the compliance by developed countries of the role envisaged for them, including in relation to the transfer and facilitation of technology, as part of the technology bank.

Conclusion

This Chapter has made a case for the need to operationalize the framework of normative principles enshrined in the Declaration on the Right to Development, which is indispensable to the successful implementation of the SDGs and accompanying targets by 2030. In order to build this case, section II provided a schematic overview of the 2030 Agenda. Against this backdrop, Section III introduced the relationship between the RtD and the 2030 Agenda. It pointed out that the Agenda is not only “informed” by the DRTD, but also strongly “reaffirms” the RtD and is “grounded” in it. As such, it was explained that Agenda 2030 itself contains a mandate for operationalizing the RtD in the implementation of the SDGs. In order to develop a scenario of what this entails, Section IV identified the scope and content of the RtD and outlined its most important principles and elements pertinent to SDG implementation. Section V then completed the circle by demonstrating the symbiotic relationship between the RtD and sustainable development, the primary objective of the 2030 Agenda. It highlighted that the RtD is the human rights avatar of sustainable development and thus gives it proper shape, colour and texture by stressing specifically on the right and duty aspects of sustainable development. This symbiotic relationship is further fortified by understanding the SDGs as an expression by States of their intention individually and collectively to fulfil their obligations under the DRTD. Thus viewed, the SDGs are inherently a policy expression and plan of action for operationalizing the RtD. Building on these observations, Section VI finally presented what operationalizing the RtD in the implementation of the SDGs entails.

In conclusion, it can be said that the Declaration on the Right to Development is an empowering instrument because it provides the normative basis for human beings to claim development as a human right. While it is true that the DRTD emerged in the context of the decolonization process, it is equally true that its principles have never been more relevant than they are today, particularly in the face of the increasing popular backlash against the asymmetric and inequitable impacts of globalization and global governance in trade, investment, finance and development. The 2030 Agenda is envisioned as an agenda for “people, planet and prosperity”, and promises to transform our unequal and inequitable world through the implementation of the SDGs. It seems inevitable

⁷³ Bhumika Muchhala, “SDG Indicators Challenged by Many States”, *Third World News Network*, 24 March 2016, Available from <http://www.twn.my/title2/climate/info.service/2016/cc160309.htm> (accessed on 26 November 2016).

⁷⁴ *Ibidem*.

⁷⁵ *Ibidem*.

that if the RtD is not operationalized in implementing the SDGs, we will most certainly ensure that the goals will be off-track and unrealized, and the promise of the 2030 Agenda will remain unfulfilled. Indeed, operationalizing the RtD in implementing the SDGs is the only way forward if we are to have a safe journey to a sustainable future.